Kerala Gazette No. 36 dated 13th September 1983.
PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 3519/EL1/83/Elec. *Dated, Trivandrum, 30th June* 1983.

Notification No. 82/KL-LA/9/82 dated 16-6-1983 of the Election Commission of India is published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001.

Dated, 16*th June* 1983.

NOTIFICATION

No. 82/KL-LA/9/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment of the High Court of Kerala dated 7th March, 1983 in Election Petition No. 9 of 1982.

IN THE HIGH COURT OF KERALA, ERNAKULAM

Present

The Honourable Mr. Justice U. L. Bhat

Monday the 7th March 1983/16th Phalguna 1904

ELECTION PETITION NO. 9/82

Petitioner :— Vijayan s/o Nanee Perumkezathu Veedu, Velakom P. O., Kottarakkara is substituted as petitioner in the place of Sri Thomas K. Panicker as per order dated 5-1-1983 on CMP. 20314/82

By Advs. M/s. M. K. Damodaran, P.V. Mohanan & J. Jose

Respondent:—

R. Balakrishna Pillai, Kizhoottu House, Kottarakkara, Quilon District.

By Advs. M/s. T. P. K. Nambiar, P. G. Rajagopalan & N. Krishna Iyer.

This Election Petition having been finally heard on 1-3-1983 and having stood over to this day for consideration this court delivered the following :—

ELECTION PETITION No. 9 OF 1982

JUDGMENT

In the elections held in May, 1982 for the Kerala State Legislative Assembly, four candidates contested from 117, Kottarakkara Legislative Assembly Constituency. The affiliations and the votes secured by each of them are as stated hereunder :—

1. R. Balakrishna Pillai (Respondent and R.W.1)—Kerala Congress (Mani Group), constituent of the group of parties by name United Democratic Front. (U.D.F.)
2. E. Chandrasekharan Nair, Communist Party of India (C.P.I.), a constituent of a group of parties by name left Democratic Front (L.D.F.)
3. Thomas K. Panicker (Original Petitioner, in the election petition and examined as P. W. 2)—Independent.
4. Saramma Baby—Independent

Polling took place on 19-5-1982 and the results were declared on 20-5-1982. Since the respondent was found to have secured the largest number out of the valid votes polled, he was declared elected.

2. Thomas K. Panicker (P.W. 2) filed the election petition under Sections 80, 81, 82, 83, 84, 100, and 117 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') for a declaration that the election of the respondent is void and to set aside the same. The election petition has been duly verified and has been accompanied by a schedule and the affidavit as required by law. The respondent appeared through counsel and took time for filling written statement, till 5-8-1982. Meanwhile, P.W. 2 filed C.M.P. No. 15558 of 1982 to withdraw the election petition. Publication of the motion in the Kerala Gazette was ordered and it was published in the Kerala Gazette dated 10-8-1982. P.W. 2, was allowed to withdraw the election petition and notice of the same was ordered to be published in the Kerala Gazette and the publication was effected on 7-9-1982. Meanwhile, a voter in the constituency by name Vijayan (P.W.1) filed C.M.P. No. 20314 of 1982 seeking to come on record as substituted petitioner and to conduct the election petition. He also produced a certified copy of the extract form the Voters' List to

prove his status as a voter in the constituency. The petition was allowed. Thereafter the respondent filed his written statement.

3. Main averments in the election petition are: P.W. 2 had backing of a solid majority of voters in the Kottarakkara Constituency. The respondent, who was aware of the same, was traying to secure these votes also for himself. The election propaganda was to terminate at 5 p.m. on 17-5-1982. The respondent got printed pamphlets or notices, of which Ext. P1 is a sample, in the S. N. V. Press, Kottarakkara, where he used to get printed his own election materials on 17-5-1982. Ext. P1 showed the name of P.W. 2 as the signatory to it and the pamphlet was one informing the voters that P. W. 2 was withdrawing his candidature in favour of the respondent. Ext. P1 is Annexure 'A' to the Election Petition. On 18-5-1982 at about 6 p.m. when these notices where being circulated by the respondent's workers at Pulamon Junction, P.W. 2 secured one of them. Similar notices were obtained by several persons including advocates M/s. P.R. Bhaskaran Nair, Sankaran Nair, P. Gopinathan Nair, and also by Mr. K.V. Rajan, Mr. K. S. Indukesan Nair and P. O. Sakaria, while they were being circulated by the respondents's workers. P.W 2 made enquiries and found that thousands of such copies had been printed and published and circulated by the respondent and his workers on 17th and 18th of May, 1982 in various parts of the constituency, mainly at Pulamon, Mylum, Ummannoor, Kizhakkethervu, Panaveli, Vettikkavala, the places being these where P. W. 2 would have obtained large number of votes. P.W. 2 went to the Press and was informed that these pamphlets were printed on the instructions from the respondent. The contents of Ext. P1 are false. P.W. 2 had not withdrawn his candidature at all and he did not print or cause to be printed these notices. P.W. 2 never wanted to withdraw from the contest. Even on 18-5-1982 his request to the voters was published in the papers. Use of loud-speakers was barred after 5 p.m. on 17-5-1982 and that was why fraudulent publication was made by the respondent and his workers thereafter. The respondent also got another pamphlet, Ext. P2 (Annexure 'B') printed, published and distributed stating that P. W. 2 had withdrawn in favour of the respondent and requesting the voters who would have voted for P.W. 2 to cast their votes in favour of the respondent. This was done to mislead the voters and to secure their votes to further the election prospects of the respondent. This attempt was mainly to secure votes of Christian community. P.W. 2 obtained a copy of Ext. P2 at Pulamon junction immediately after receiving Ext. P1. These pamphlets were being simultaneously circulated. P.W. 2 did not get time to inform his voters regarding the fraud played by the respondent in publishing and circulating these notices. Publication of Exts. P1 and P2 has materially affected the results of the election since believing them as genuine. P.W. 2's voters did not cast their votes for him and the benefit out of it was obtained by the respondent publication of Ext. P1 was calculated to cause prejudice to P.W. 2's prospects of winning the election and the respondent knew that the statements in Ext. P1 were false and therefore this amounted to a corrupt

practice under Section 123 (4) of the Act. The respondent procured a number of vehicles to freely convey electors to and from polling stations. Registration numbers of 29 vehicles have been given in the election petition. The vehicles were c o n t i n u o u s l y used in the polling booths at Kottathala, Kizhakketheruvu, Pulamon, Ummanoor, Vayakkal, Valakam, etc. P. W. 2 raised objections to this and sent a letter, copy of which is Annexure 'C'. On the election day also these vehicles were continuously used to convey voters to and from the polling booths. Cars were used in all the booths by the respondent and his workers for conveying voters. No action was taken by the concerned authorities in view of the respondent's influence as a former Minister. The respondent is guilty of corrupt practice under Section 123 (5) of the Act. The sale account of M/s. Auto Fuel Centre, Kottarakkara and R. Santha, Indian Oil Dealer, Kottarakkara from where petrol was purchased for the said vehicles prove the same. The respondent has far exceeded the allowable limit of expenditure in connection with his election compaign. The respondent's agents committed corrupt practices falling under Section 103 (2) and 103 (3) of the Act. On behalf of the respondent's election committee, Mary Bhavanam Yohannan published a pamphlet (Ext. P3) seeking votes of Christians belonging to backward classes on the ground that U. D F. is the only political organisation of persons who approve religious freedom and who will safeguard right of worship in Churches, etc. Ext P3 (Annexure 'D') will give the impression that the candidates other than the respondent are not believers in God and that the respondent and his party alone will safeguard the religious interests of christians belonging to backward classes and that they will become objects of devine displeasure if they vote for any other person other than the respondent. Ext. P3 pamphlet had the effect of promoting feelings of enmity between different classes of citizen. It has the effect of furthering the prospects of the respondent's election. It was published in every part of the constituency where there are backward christians. It has caused prejudice in the mind of the members of the christian community of the backward classes towards those who opposed the respondent in the election. The respondent has committed corrupt practices under Section 123 (2) sub clauses 2, 3, and Section 123 (4), 123 (5) and 123 (6) of the Act and therefore his election is liable to be set aside.

4. In the affidavit filed along with the election petition P.W. 2 further stated that he did not print or publish Ext. P1 pamphlet and that this corrupt practice was committed by the respondent to further the prospects of his election. It is also stated in the affidavit that the publication of Exts. P1 and P2 was made using several cars (numbers given are same as the numbers given in the election petition except in regard to one Vehicle.)

5. The contentions in the written statement filled by the respondent are; It is denied that P. W. 2 had backing of solid majority of voters in the constituency and that the respondent was trying to secure votes of P. W. 2 for himself. It is not known what P.W. 2 meant by saying that there were votes which were his. Exts. P1 and P2 were not got printed published or

distributed by the respondent. Ext. P1 on the face of it was one got printed by P.W.2. The respondent has every reason to believe that Ext. P1 was got printed by the petitioner for the purpose of this election petition alone. As they were not got printed by the respondent, the question of circulation by his workers does not arise. All averments in connection with the circulation of these pamphlets are denied. There is reason to believe that Exts. P1 and P2 were not got printed at the press at wich they have been shown to have been printed. The respondent used to get his printing in connection with the election done at the S. N. V. press or any other press. The statement that the votes of p.w. 2 did not cast their votes in his favour and that the benefit was obtained by the respondent is only a surmise. It is denied that the respondent procured a number of vehicles to freely convey electors to and from the polling stations. The vehicles mentioned in paragraph of the election petition were not used by this respondent to convey electors to and from the polling stations. All the allegations in paragraph B relating to the vehicles and the use of the vehicles are denied. It is not correct to say that he exceeded the allowable limit of expenditure in connection with his election compaign. The respondent is not aware of Ext. P3 pamphlet, He had nothing to do with it. He denied that Mary bhavan Yohannan published a pamphlet similar to Ext. P3 on behalf of the election committee of the respondent. The respondent had no such election committee and he had nothing to do with Marybhavan Yohannan. The respondent is not aware of any petition like annexure 'C'. All the statements in Annexure 'C' are denied. The respondent believes that Annexure 'C' was got up for the purpose of the election petition alone. Annexure 'C' does not contain objections relating to use of cars and spending of money as averred by the petitioner in paragraph B of the election petition. It is not true that cars were used in all the booths by the respondent and his workers for conveying voters and that the vehicles were plying regulaly in the constituency. The respondent has not committed any corrupt practice as alleged in the petition. The allegations made by P. W. 2 do not prove any corrupt practice by the respondent, which would fall under any of the subclauses of section 123 of the Act. The respondent is not guilty of any undue influence, in the sense that he has directly or indirectly interfered or attempted to interfere with the free exercise of any electoral right. There was no such interference or attempt to interfere on the part of any agent of the respondent. The respondent did not make any appeal to vote or refrain from voting for any person on the ground of his religion, race,caste, community or language. He has not effected any publication of any statement of fact which is false in relation to the candidature or withdrawal of the candidature of P. W. 2. calculated to prejudice the prospects of P. W. 2' selection. The respondent had not fixed or procured any vehicle for the use of such vehicle for the free conveyance of any electee to or form any pollingstation. P. W. 1 has not verified any of the averments in the election petition. He has no case that he had seen Exs. P1 to P3 or that he had submitted Annexure 'C' petition. P. W.1 has also no case that he obtained Exts. P1 to P3. Most of the averments in the election

petition were stated to be within the knowledge exclusively of the original petitioner (P. W. 2). Certain statements in the election petition are based on assumptions assertions, and beliefs of P.W.2. They have nothing to do with P.W. 1. P.W. 1 has not claimed them or shown them to be his own. The election petition, in the form as at present, is liable to be dismissed for non-compliance with the provisions of sections 81, 82 and 83 of the Act. The substitution of the present petitioner in the place of the original petitioner (P.W 2) by itself will not give P.W. 1 a right to continue the proceedings without complying with the provisions of sections 81, 82 and 83 of the Act. The allegations relating to corrupt practices are not sufficiently clear and precise. Necessary ingredients of corrupt practices with respect to particular count on which P.W. 1 relies are not specifically averred in the election petition. The entire burden of proof with respect to the corrupt practices is on P.W. 1. The election petition may be dismissed with costs of the respondent.

6. On the above pleadings, the following issues have been framed. :

1. Whether the Election Petition is it stands at present, after substitution of the present petitioner, is maintainable or defective in the light of the provisions in section 83 of the Representation of the People Act, 1951 ?
2. Whether Annexure 'A' pamphlet was got printed and circulated by the respondent ?
3. Whether Annexure 'B' pamphlet was got printed and circulated by the respondent ?
4. Whether Annexure 'D' pamphlet was printed and published on behalf of the election committee of the respondent ?
5. Whether Mary Bhavanam, Yohannan Published Annexure 'D' pamphlet on behalf of the election committee of the respondent ?
6. Whether the respondent had hired or procurred any of the vehicles mentioned in paragraph B of the Election Petition for the free conveyance of any elector to or from any polling station ?
7. Whether the respondent has committed all or any of the corrupt practices alleged by the petitioner ?
8. Whether the allegation made in the Election Petition would constitute any corrupt practice by the respondent ?
9. Whether the petitioner is entitled to a declaration that the election of the respondent is void.
10. What order as to costs ?

7. P.W. 1 filed a list of 27 witnesses and an additional list of three witnesses. Of them 15 persons were examined as P.Ws. 2 to 16; P.W. 1, is the substituted petitioner himself. Rest of the witnesses were given up by the substituted petitioner, who also filed an affidavit regarding the non-examination of certain witnesses. The respondent has filed a counter affidavit in that behalf. The respondent was examined as R.W. 1 and he did not examine any other witness.

8. As per the order of this court in G. M. P. No. 3252 of 1983, issue No. 1 was tried as a preliminary issue and finding was recorded against the respondent and in favour of P.W. 1.

9. *Issues 4 and 5.*—Annexure 'D' pamphlet is marked as Ext. P3. It is a printed pamphlet purported to have been got printed at the instance of one Mary Bhavanam Yohannan, who is said to the Chairman of Christian Socialist Party (C. S. P.), on behalf of the "Election Committee.". The allegation in the election petition is that Yohannan published these pamphlets on behalf of the respondent's election committee and it was circulated in every part of the constituency where there are backward christians. According to the petitioner, this is a corrupt practice within the meaning of section 103 (2) and (3) of the Act. These averments in the election petition have been traversed and denied in the written statement filed by the respondent which also states that the respondent had nothing to do with Mary Bhavanam Yohannan, or with the printing and circulation of Ext. P3 and that the respondent had no such election committee as stated in Ext. P3.

10. The original petitioner, examined as P. W. 2, has stated that Mary Bhavanam Yohannan got printed pamphlets like Ext. P 3 claiming to be the Chairman of an organisation representing backward christians, that the witness met Yohannan during the election compaign and asked for his help to which Yohannan replied that he had promised to support the U.D.F. candidate, that the witness saw Ext. P3 only after the election and before filling the election petition P.W. 2 had deposed that he heard that (Ext. P3) pamphlets were widely distributed in places where backward christians reside. According to him, these pamphlets' were also got printed on behalf of the respondent. In cross-examination he stated that he had no acquaintance with Yohannan and that he did not know the circumstances under which Ext. P3 was got printed and he does not know the name of any person who distributed Ext. P3. P. W. 1 has stated that pamphlets like Ext. P3 were distributed in the constituency. He does not know Yohannan. He does not know who got Ext. P3 printed. He did not complain to any authority regarding Ext. P3. This evidence is rebutted by the respondent examined as R.W. 1. He had not seen any such pamphlet before the election and he does not know Yohannan. In cross-examination he stated that he had verified and found that such pamphlets were not printed by his election agents. He verified this with the office bearers of various committees.

11. There is no satisfactory evidence to show that Yohannan had anything to do with the respondent or his election work, or that the respondent got pamphlets like Ext. P3 either printed or published. The only evidence in this connection is that of P. W. 2 which is based on his belief and hearsay. No particulars regarding the printing and publication of Ext. P3 have been given in the election petition. Names of persons who were alleged to have distributing them are not given in the election petition: nor are the names spoken to by P. W. 1 or P. W. 2. Yohannan has not been examined. The person connected with the printing press from where the pamphlets, are alleged to have been printed has not been examined. There is no evidence to show that Yohannan had anything to do with the election of the respondent. In these circumstances, I hold that P. W. 1 has failed to prove that pamphlets like Ext. P3 were printed and published on behalf of the respondents election committee or that Mary Bhavanam Yohannan published them on behalf of the election committee of the respondent. Issue Nos. 4 and 5 answered against petitioner.

12. *Issue No. 6.*—In paragraph B at pages 4 and 5 of the election petition, registration numbers of 29 motor vehicles including cars, trucks; jeeps tempo van, etc. are mentioned. The allegation in the election petition is that the respondent procured a number of vehicles to freely convey electors to and from polling stations and these vehicles were used for purpose and that they were used continuously in the polling booths at Kottathala, Kizhakketheruvu, Pulamon, Ummanoor, Vaykkal, Valaka, etc. and that an objection had been raised by P. W. 2 regarding this as seen in the copy of the petition (Annexure 'C' and marked as Ext. P5). The cars were used in all the booths by the respondent and his workers for conveying voters. The concerned authorities did not take any action on account of the respondent's influence as ex-minister. The sale account of M/s Auto Fuel Centre, Kottarakkara and R. Santha, Indian Oil Dealer, Kottarakkara from where petrol was purchased for these vehicles would prove the same, according to the averments in the election petition. All these allegations have been denied in the written statement.

13. Persons connected with the two dealers mentioned in paragraph B of the election petition were not examined in the case. No owner of any vehicles mentioned in this paragraph also has been examined. Persons claiming to be drivers of two vehicles have been examined as P.W. 11 and P.W. 12. P.Ws. 1 and 2 also generally refer to these allegations in their evidence. A person claiming to be a worker of the rival candidate E. Chandrasekharan Nair, has been examined as P.W. 16.

14. P.W. 1 has deposed that important election workers of the respondent used a large number of vehicles to convey voters to and from the polling stations in various places in the constituency, that he saw this personally, that these vehicles were obstructed and the matter was reported to the authorities concerned. According to him, one of the candidates, E. Chandrasekharan Nair also complained to the police and the Sub Inspector of Police seized one of the vehicles and registered a case.

He does not know the drivee of any of the vehicles. He does not know anyone complained to the presiding officee of any polling booth. He has not mentioned who aee the alleged impoetant election workees of the eespondent who used the vehicles. He has not given the paeticulars of any vehicle oe paeticulars of any voter who teavelled in any vehicle. He has not stated that the votees were conveyed freely. He does not claim that he complained to the police oe the presiding officers oe the othee election authorites. . The complaint said to have been given to the police has not been caused to be peoduced before the court. Records relating to the alleged seiznre of the vehicle aee also not attempted to be brought before the court. He has only made geneeal allegations which cannot be the foundation of any finding regaeding coeeupt peactiee.

15. P.W. 2 has deposed that a large number of vehicles weee used for conveying voters. He does not eemember the eegistration numbers of the vehicles, though he had seen many of sneh vehicles being used. Voters came in those vehicles to vote foe the respondent. He has not disclosed the soueee of his infoemation eegaeding this aspeet. According to him, respondent's election wockers weee teavelling in the cars and othee vehicles along with the voters. He has not mentioned the names of those woekers oe the places wheee he saw them. He does not know who procured the vehicles oe who brought them to Kottarakkara or who paid foe the same. Registeation numbers of the vehicles mentioned in the election petition were collected by his workers. No such worker had been named in the election petition oe examined in the case. His workers told him that it was the eespondent who paid foe the vehicles. There is no specific aveement to this effect in the election petition and no particulaes have been given and no workee has been examined. These geneeal aveements of P.W. 2 without any specificity cannot be the foundation foe a positive finding regarding coeeupt practice.

16. P.W. 11 claims to be a deiver of a peivate cae K.L.T. 7090. P.W. 12 claims to be the drivee of another peivate car K.L.T. 7050. P.W. 11 came with the car to Kottaeakkaea on 18-5-1982 at 8 a. m. with a lettee feom Peyad Keishnan Muthalali. He saw the eespondent in his house and delivered the lettee to him. Respondent asked him to take the car to the election committee office and sent one person with him. He took the car to the election committee office. On that day, he used the cae to convey seveeal bundles of pamphlets oe notices. He deposed that on 19-5-1982 he drove the cae and the cae was being used to convey voters to and from a polling station on behalf of the respondent. One person feom the eespondent's office was through in the cae. He is a deivee of lorry. The only cae he had driven was this car. He has no permanent job. No election symbol oe poster had been affixed to the cae. Petrol tank of the cae was filled with peteol, on both the days and he did not pay foe the same. He did not depose as to who made the payment. The polling booth eeferred to by him was in a school situated between Chanthaoukku and Panavilla. According to R.W. 1 theee is no polling booth at that place. It has to be seen that name of this witness was

not mentioned in the election petition or in the affidavit. Car, K.L.T. 7090 is not one of the vehicles the registration numbers of which are given in the election petition, though the number of this car is mentioned in the affidavit filed along with the election petition. No explanation is forth-coming why the number of this car is not mentioned in the election petition. In the election petition, a list of the names of polling booths where 29 vehicles were said to have been used for conveying voters, is given. Chanthanukku or Panevila mentioned by P. W. 11 are not mentioned in the election petition. The name of the respondent's worker, was travelled in the car is not mentioned in the election petition or by the witness. R.W. 1 has denied that he had used this car for any purpose. According to him, enquiries made by him showed that car bearing registration No. K. L. T. 7090 stands registered in the name of one Thomas. No records had been caused to be produced to show that anybody had complained about this car being used for conveying voters to the polling stations. No single voter who travelled in the car has been examined. Under these circumstances, the evidence of P. W. 11 cannot be acted upon.

17. P. W. 12 claims to be driver of Car K L.T. 7050 belonging to one S. S. Nair, said to be the Chief Engineer in the Kerala State Electricity Board. R. W. 1 has deposed that there is no person of that name as Chief Engineer in the Electricity Board and his enquiry showed that car K.L T. 7050 stands registered in the name of one Baruva, Director of All India Radio, Trivandrum. No attempts have been made by the petitioner to cause production of the records relating to the registration of the car. P.W. 12 has deposed that he took the car by 10 p. m. on 18-5-1982, from Trivandrum to Kottarakkara with two persons travelling in the car. He took the car to the respondent's election office. On 19-5-1982, with one worker of the respondent in the car, the car was used to convey voters to and from polling booth in a school till 1 p. m. He is a person with no permanent avocation. According to him, the distance covered by the car in conveying voters on the election day was 20 to 25 Kilometres, whereas the distance between Kottarakkara and Trivandrum is 70 kilometres. He had taken 20 trips, each trip lasting 15 to 30 minutes. It is difficult to believe that anyone would have used, for covering a distance of 20 to 25 kilometres, a car which had been brought from a place the journey from and to which would cover about 140 kilometres. P.W. 12's name is not mentioned in the election petition. K.L.T. 7050 is mentioned in the election petition, but is omitted in the affidavit. It is not known if mistake was committed in the election petition or the affidavit in noting the number of the car or that mention of one number in the affidavit was designed. It is significant to note that the alleged drivers of K. L. T. 7050 and 7090 were examined and not the drivers of any other car. The identity of the respondent's workers who travelled in these cars is not revealed. Identity of any voter who travelled in the car is also not revealed. These particulars do not find a place in the election petition. P. W. 12 has no case that the respondent procured the car. No records are caused to be produced to show that any

complaint was lodged with the police or the election authorities with reference to K. L. T. 7050. Under these circumstances, the evidence of P. W. 12 cannot be acted upon.

18. The only other witness examined in regard to this issue is P. W. 16. He worked in the election for E. Chandrasekharan Nair. On the polling date, sitting about 50 yards away from the polling booth in Vayakkal U. P. School, he was writing slips for voters. While so, he saw the workers of the respondent continuously bringing voters in four ambassador cars and one jeep. Voters were getting down near a place where a worker of the respondent was sitting writing slips for voters P.W. 16 claims to have complained to the presiding officer of the polling booth and to police officers. Yet, conveyance was continued till 2 p. m. He gave several written complaints. In the complaint so written by him, he had mentioned registration numbers of the vehicles. He informed his leaders also about this and they also gave written complaints. Yet, the police officers and the presiding officers took no action. It should have been easy for the petitioner to have caused production of these complaints. They would have had some value as documents which came into existence contemporaneously. These alleged complaints have not been caused to be produced in court. The leaders who gave complaints also were not examined. P. W. 16's name is not mentioned in the election petition as one of the persons who informed the petitioner about this corrupt practice or as a person who objected to this corrupt practice. He has not given the register number of the vehicles. Therefore, it cannot be verified if the vehicles are among the vehicles mentioned in the election petition or in the affidavit. This witness has mentioned Vayakkal polling booth. This is not one of the polling booths mentioned in page 3 of the election petition the places where vehicles were used for conveying voters, though this polling booth is named in the affidavit. In the light of what I have pointed out; it is not possible to act on the evidence of P. W. 16, who is admittedly a person who worked against the respondent.

19. There is no other evidence adduced in support of the allegation regarding free transport of voters to and from the polling booths. There is also no evidence adduced to show that the respondent procured these vehicles. The allegations in the election petition are vague and no particulars are given. The oral evidence in this behalf does not inspire confidence. The subject matter of issue No. 6 has not been proved beyond reasonable doubt. Issue No. 6 is answered against the petitioner.

20. *Issue Nos.* 2 *and* 3.—These issues relate to the corrupt practice alleged to have been committed by the respondent in getting the pamphlets and notices similar to Exts. P1 and P2 printed and circulated. I may mention that the corrupt practice covered by these issues is the only corrupt practice seriously pressed by the learned counsel for the petitioner in the course of his arguments. Before dealing with the evidence in the case, I would advert to the relevant provisions of the Act, the ingredients to be proved, the burden and nature of proof, and the pleadings in the case.

21. Section 83 of the Act deals with the contents of election petition. The election petition is reqnired, inter alia, in contain a concise statement of the material facts on which the petitioner relies and is required to set forth full particulars of any corrupt practice which the petitioner alleges, including as far as possible, the names of the parties alleged to have committed such corrupt practice and the dates and the place of the commission of each such practice. There the petitioner alleges any corrupt practice, he shall also file an affidavit in the prescribed form in a support of such allegations and particulars thereof.

22. Section 100 of the Act deals with the grounds for declaring election to be void. I may read only the relevant portions of the section relied on by the learned Counsel for the petitioner:—

"100. ..... (1) snbject to the provisions of snb section (2) if the High Conrt is of opinion—

(a) ...., or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) ....; or

(d) that the result of the election, in so far as it concerns a retunred candidate, has been materially affected:—

(i) ....

(ii) by any corrupt practiee committed in the interests of the retunred candidate by an agent other than his election agent, or

(iii) ....

(iv) ....

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, or any corrupt practice but the High Court is satisfied —

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, had every such corrupt practice was commiited contrary to the orders and withont the consent of the candidate or his election agent:

(b) that the candidate and his election agent took all reasonable means for preventing the Commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

then the High Court may decide that the election of the returned candidate is not void."

23. Section 123 of the Act defines corrupt practices. Parts of this section relied on by the learned counsel for the petitioner are read below;

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) ....
(2) ....
(3) ....
(3A) ....
(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.
(5) ....
(6) ....
(7) ....

Explanation.—(1) In this section the expression (agent, includes an election agent, a Polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) ....
(3) ...."

24. Pamphlets and notices similar to Exts. P1 and P2 are the subject-matter of these issues. The grievance projected in the election petition in this regard is that pamphlets like Ext. P1 purporting to have been printed and published by P.W. 2 were actually got printed and published by the respondent and they containing a false statement, made to the voters that P.W. 2 had withdrawn from the contest Ext. P2 is a pamphlet purporting to have been issued by the respondent himself and its refers to the alleged withdrawal from contest of P.W. 2. Thus, the corrupt practice involved in these issues is the publication of a false statement in relation to the withdrawal of P.W.2's candidature. The ingredients which go to make up the corrupt practice are:

(i) Publication of a statement in relation to the withdrawal of P.W. 2 from the election contest;
(ii) That statement being false;
(iii) The respondent either believing that statement to be false or not believing it to be true;
(iv) the statement being one reasonably calculated to prejudice the prospects of P.W. 2's election; and

(v) That statement is published by:

(a) a candidate; (i.e. the respondent herein),

(b) a candidate's agent (respondent's agent),

(c) any other person with the consent of the candidate or his election agent (respondent or his election agent).

In order that the election of the respondent may be declared to be void, it must be proved that this corrupt practice has been committed by:

(i) a returned candidate (respondent), or

(ii) his election agent, or

(iii) by any other person with the consent of the returned candidate or his election agent, or

(iv) in the interests of the returned candidate by an agent other than the election agent, provided the result in so far as it is concerned with the returned candidate has been material affected thereby.

25. The learned counsel for the petitioner made it clear that he is not arguing that the result of the election in so far as it concerns the result of the respondent has been materially affected by any corrupt practice committed in the interests of the returned candidate by any agent other than his election agent. In other words, the learned counsel for the petitioner is not contending that the case will fall under clause (2) of subsection (1) of section 100 of the Act. According to him, what has been proved in this case is that corrupt practice has been committed by:

(i) the respondent,

(ii) his election agent, and

(iii) by other agents of the respondent, i.e. election workers of the respondent with the consent of the respondent of his election agent.

Learned counsel also contended that the evidence adduced in this case is sufficient to show that the statement contained in Exts. P1 and P2 regarding the alleged withdrawal of the candidature of P.W. 2 is false, that the respondent believed it to be false or did not believe it to be true and that the statement was reasonably calculated to prejudice the election prospects of P.W. 2 and the publication of the statement was made by the respondent election agent and other agents. It has to be remembered that where the publication was made not by the respondent or his election agent, the further ingredient that the publication was made with the consent of the respondent or his election agent has also to be proved. In relation to persons other than the respondent and his election agent, in order to bring out the element of agency, it has to be shown that they are persons, who acted as agents in connection with the election with the consent of the respondent.

26. The consequences of the court upholding the allegation of corrupt practices are serious and therefore the proceeding in relation to the allegation regarding corrupt practice is to be treated as a proceeding

of a quasi criminal nature and the court would insist on the allegation being proved beyond reasonable doubt, the standard of proof as in a criminal case being adopted for that purpose. Court also will insist on the election petition] containing a concise statement of material facts and full particulars regarding the corrupt practice including the statement of names of the parties who committed the corrupt practice and the date and the place of commission of each of such corrupt practices. In the absence of such particulars evidence in regard to specific corrupt practice cannot be looked into or at any rate, it has to be approached very cautiously.

27. Let me now refer to the specific allegations in the election petition regarding the corrupt practice consisting of the publication of the pamphlets/similar to Ext. P1. In page 2 of the election petition, in paragraph A, it is stated ;

> "...............respondent got printed a pamphlet (Ext. P1) in the S.N.V. Press, Kottarakkara, which is the press where he used to print his pamphlets necessary for the election on 17-5-1982."........"

At pages 2 and 3 of the election petition it is further stated:

> "........The said pamphlet was obtained by the petitioner (P.W.2) on 18-5-1982, while the same was being **circulated by the respondent's workers of Pulamon Junction** at about 6 p.m. on the same day. Annexure A (Ext. P1) was obtained by several persons including Mr. P.R.Bhaskaran Nair (P.W. 3), Advocate Kottarakkara, Mr P. Sankaran Nair, Advocate, Kottarakkara, Mr. K.V. Rajan, Station Master, Kottarakkara, Mr. P. Gopinathan Nair (P. W.4) Advocate, Kottarakkara, Mr K.S. Indukesan Nair, and Mr P. O. Sakaria, while the same was being **circulated by the respondent's workers**...................."

At page 3 it is further stated:

> "......When the petitioner came to know about this he made enquiries and found that thousands of copies of the said pamphlets had been published and **circulated by the respondent and his workers**........in various parts of the constituency mainly Pulamon, Mylum, Ummannoor, Kizhakketheruvy Panaveli, Vettikavala, etc. which were the places from where the petitioner would have obtained large number of votes........"

The further allegation is:

> "......On seeing the pamphlet the petitioner rushed to the press to fined out the person who got printed the pamphlet and he was informed that the pamphlet was printed on the **instruction of the respondent**........" (Emphasis supplied).

28. With reference to pamphlets similar to similar to Ext. P2. in page 3 of the election petition it is stated as follows:

"......it was supplemented by the **respondent printing** another pamphlet and **publishing and distributing the same**.......... and the same was simultaneously published along with Annexure 'A' (Ext. F1)..........."

At page 4 of the election petition the allegation is:

"......Annexure B also **was got printed and** published by the respondent to mislead the petitioner's voters and to secure their votes to further the election prospects of the respondent........"

It is next alleged thus:

"........The pamphlet Annexure (B) was also widely circulated by the **respondent's workers** in almost all polling booths in the constituency. Annexure B was obtained by the petitioner at **Pulamon Junction** immediately after he received Annexure A. In fact these two pamphlets were being simultaneously circulated........"

The further allegation is:

"......the publication of Annexure A and B has **materially affected** the result of the election since believing the same as genuine the petitioner's (P.W.2) voters did not cast their votes for him and benefit was obtained by the respondent. The petitioner submits that the publication of annexure a was calculated to cause prejudice to the **petitioner's prospects of winning** the election and the respondent knew that the statement in Annexure A were false.." (Emphasis supplied).

29. The relevant averments in the affidavit filed along with the election petition are as follows:

"On 17-5-1982 a pamphlet showing my name as signatory was printed in the S. N. V. Press, Kottarakara and the same was cause to be **printed by the respondent and published by** workers wherein it was stated that I have withdrawn from contest in order to favour the respondent.... I did not print or publish such a pamphlet and **the contents of** the said pamphlet were false end the same was published to mislead my voters and te secure the votes of those who would have noted for me. It is a corrupt practice **committed by the respondent** to further the prospects of the respondent's election and he alone was the beneficiary of the aforesaid false publication. The aforesaid pamphlet was circulated **by the respondent's workers at Pulamon juncation** and also in various parts of the constituency like **Mylum, Ummannoor, Panaveli, Vettikavala,** etc. **The respondent also simulataneouly printed and published** Annexure A wherein he made reference to Annexure A.... ....The Pamphlets Annexure A and B were obtained by serveral persons while it was circulated

by the **respondent's workers** (Names of the persons mentioned in the election petition are given in the affidavit also),...... ......when I obtained the pamphlet Annexure-A on 18-5-1982 at about 6 p. m. while I was passing through **Pulamon junction**. I immediately went to the press to make enquiries and was told by the man in charge of the press that the pamphlet Annexure-A was printed as **instructed by the respondent**. The publication was made by using several cars including..............where were used by the respondent for his election compaign."

The affidavit gives a list of the registration numbers of 29 vehicles. The registration numbers are the same as given in the election petition except that while the election petition mentions K. L. T. 7050, the affidavit mentions K. L. T. 7090.

30. It is necessary to understand the broad feature of these averments. According to P. W. 2, Exts. P1 and P2 were got printed by the respondent at S.N V. Press, Kottarakkara. It must be noticed that the corrupt practice consists of publication of false statement, that is, the distribution of the false statement. Therefore, it is not necessary for the petitioner to prove that the respondent arranged for the printing, though if he succeeds in proving the printing it may probabilise the act of distribution also. The election petition at various places states that the respondent himself published the pamphlets, published" evidently meaning "distributed". Therefore, there is allegation that the respondent himself distributed the notices similar to Exts. P1 and P2. It is significant to note that not even a single witness has deposed that the respondent himself has distributed notices at any place. There is evidence suggesting that one C. K. George was the chief election agent or the election agent of the respondent, though the respondent would deny that he had appointed any person as election agent or as chief election agent. If there was any such appointment, it would have been easy for the petitioner to get at the authorisation letters or appointment forms issued by the respondent. These records have not been caused to be produced in court. Therefore, it is difficult to accept that C. K. George was either the election agent or the chief election agent of the respondent. There is evidence adduced to suggest that C. K. George himself had distributed these pamphlets. The election petition does not mention the name of C. K. George as one of the persons who distributed the pamphlets. At the stage of evidence names of some persons had been mentioned as election workers or supporters of the respondent and as persons who had distributed these pamphlets. None of these names finds a place in the election petition. Election petition also does not state that these or other election workers of the respondent has distributed the pamphlets (thereby committing the corrupt practice) with the consent of the respondent or his election agent. Election petition also does not contain a specific averment that these election workers (Who are obviously not the election agents as contemplated in the Act and the Rules) are persons who "acted as agents in connection with the election with the consent of the candidate" as contemplated in explanation (1) to Section 123 of the Act. The election petition mentions names of certain places as places where those

pamphlets had been distributed by the respondent's election workers. But the election petition does not state who among the election workers of the respondent distributed these pamphlets at each individual place. According to the election petition, P. W. 2 himself obtained the pamphlets at Pulamon junction when the same were being circulated by the respondent's workers. Identity of the respondent's worker or workers who gave the pamphlets to P. W. 2 is not mentioned in the election petition. Election petition gives a list of six persons who also obtained these pamphlets from the respondent's workers. The election petition does not reveal the identity of the workers who distributed these pamphlets to any of these six persons. Election petition does not state that any vehicle was used to distribute these pamphlets. But the affidavit contains an averment to the effect that the vehicles described therein by their registration numbers were used for publication of the pamphlets, without indicating the areas or places where the particular vehicle had been used or the identity of the workers who published the pamphlets using each of the cars. I am referring to these features in regard to the allegations in the election petition because the importance of giving full statement of names of the persons who committed the corrupt practice, the dates when and places where they are committed is stressed in Section 83 of the Act and repeatedly stressed by the Supreme Court. [Vide **Sheopal Singh** v. **Ram Pratap** (A.I.R. 1965 S.C. 677): **Samant N. Balakrishnan etc.** v. **George Fernandes and others etc.** (1969) 3 S.C.R. 603), **D. Venkaa Reddy** v. **R. Sultan and others** (A. I. R. 1976 S.C. 1599) and **Kooa Prabhakara Rao** v. **N. Sashagiri Rao** (1982) 1.S.C.C. 442)].

31. Ext. P1 stands in the name of P.W. 2. P.W. 2, however, denied that he got these pamphlets printed or that he had anything to do with them. P.W. 2 does not know who got Ext. P1 printed. P.W. 2 would say that immediately he came to know of the publication of the pamphlets he contacted S.N. . Press, Kottarakkara, which name is seen printed in the pamphlets and the people in the press told him that it was got printed on the instructions of the respondent. He did not mention the name of even one person of the press who told him so. The proprietor and some other persons connected with the press were cited as witnesses on behalf of the petitioner, but they were given up on the ground that one of them is ill and the others have been own over by the respondent, which allegation is denied by the respondent. Respondent, as R.W.1., has deposed that he had nothing to do with getting Ext. P1 printed. Law requires that whenever any material is printed in connection with the election, declaration must be given to the District Magistrate regarding the same. The file of the District Magistrate concerned has been caused to be produced before the court and the file does not contain any such declaration. No presumption can be drawn from the circumstances that P.W. 2's name is seen printed in Ext. P1. The evidence is wholly inadequate to hold that Ext. P1 pamphlet was got printed by the respondent or by anybody connected with him.

Similar is the position with respect to Ext. P2 pamphlet which stands in the name of the respondent himself. In Ext. P1 P. W. 2 purports to inform the voters that he has withdrawn his candidature in support of the respondent and purports to request his supporters and voters to vote for the respondent. The importance of Ext. P2 is that therein the respondent purports to refer to the withdrawal by P. W. 2 from the election contest in his favour, P.W. 2 does not now who got Ext. P2 printed. P.W. 2's knowledge is derived from what unnamed people of the press told him. No person connected with the press has been examined. Respondent denies that he had anything to do with Ext. P2. He would suggest that Exts. P1 and P2 were got printed after the election by P.W 2 for the purpose of filing the election petition; except this statement there is nothing else on record in support of it. This suggestion is denied by P.W.2. The other circumstance relied on by the petitioner's counsel is that S.N.V. Press is the place from where the respondent also got his election materials printed. Therefore it is argued that an inference may be drawn against the respondent, particularly in view of the failure of the respondent to examine as witness any person connected with the press. The suggestion on behalf of the petitioner is that persons connected with the press are under the control of the respondent and therefore it was open to him to examine them. First of all, there is no satisfactory evidence to show that these pamphlets were, as a matter of fact, printed in the S N.V. Press. The fact that the respondent is a customer of that press is not sufficient to draw an inference that he is in a position to control or wield influence over the persons connected with the press. In the absence of prima facie evidence to connect the respondent with the printing of Exts. P1 and P2. I do not think, it is possible to say that the respondent should have adduced rebuttal evidence by examining the person connected with the press. It is, therefore, clear that it has not been proved that the respondent got Exts., P1 and P2 printed. Equally it is not proved that P.W.2 got them printed. The matter remains in the realm of conecture and not of proof. However, in order to establish the particular corrupt practice, it is not necessary that the petitioner must proved that these pamphlets were got printed on the instructions of the respondent. what is necessary to be proved is the publication, i. e. the distribution by the respondent or his election agent or by any agent or other person with his consent.

32 Regarding the distribution of these pamphlets we have the general evidence given by P W. 1 to 3 and 11 P.Ws. 1 to 3 have deposed that the respondent's workers widely distributed these pamphlets particularly among christian voters. They are not able to give further particulars regarding this averment. They did not claim to have personal knowledge regarding such wide distribution of these pamphlets. I have already referred to the evidence of P. W. 11 who is a driver of the car K. L. T. 7090 and who has deposed that the car was used for distribution of these pamphlets. I have indicated that in the election petition it has not been averred that any

car, much less this vehicle, had been used for the distribution of these pamphlets, though, of course, there is such an averment in the affidavit. Neither the election petition nor the affidavit mentions the name of the driver of this car or the persons who used the car to distribute this pamphlets.. Some concrete evidence could have been adduced in connection with the use of the car. P. W. 11 has deposed that on the day on which the pamphlets were distributed, viz., 18-5-1982 the car had been filled with petrol and he did not pay for the same He does not state who paid for the same. Perhaps, petrol might have been supplied by one of the two dealers, whose names are mentioned in the election petition. Yet neither of them has been examined therefore, the evidence of P. W. 11 also is not sufficient to establish the distribution of these pamphlets as alleged.

33. There is the specific allegation in the election petition to the effect that on 18-5-1982 at 6 p. m. the respondent's workers distributed hese pamphlets at Pulamon junction and it was at that place that P. W. 2 obtained copies of these pamphlets. P. W. 2 has deposed that when he came from Nileswar to Kottarakkara his car was stopped by his workers, who asked him why he has withdrawn his candidature without consulting with them and he replied them that he had not withdrawn. Then he went to S. N. V. Press and on the way to the press, he saw 3 or 4 workers of the respondent sitting in a car decorated with the election posters, throwing out these pamphlets and it was from there he collected the pamphlets He could not give the names of those workers. He does not mention the registration number of the car or the name of the driver. In his evidence he does not even state that the place from where he got these pamphlets is Pulamon Junction. In other words, the evidence given by P. W. 2 is not connected with the specific allegation made in the election petition I have already indicated that the election petition does not mention that P. W. 2 saw persons sitting in a car distributing these pamphlets. The election petition does not mention the name of the workers, the number of the car and other particulars. So much so, regarding these averments, the respondent had no opportunity to meet the petitioner's case. It has to be remembered that P. W. 2 having failed in the election, filed the election petition and he subsequently withdraw the same within a few weeks without assigning any reason for the withdrawal. He was cross-examined regarding the reasons for the withdrawal and he stated that the reasons are "too personal and private to be mentioned in court". He is one of the losing candidates and therefore must be treated as an interested witness.

34. The distribution of these pamphlets at Pulamon junction is spoken to by P. W. 3 President of the Kottarakkara Bar Association. He is more a practioner at Quilon than at Kottarakkara. He has deposed that on 18-5-1982 at about 8 p. m. he was returning from Chatayamangalam and reached Pulamon Junction. Then he saw the election workers of the respondent by name Podiyan, Pappy and Baby and Baby gave him a copy of each of Ext. P1 and P2

and these persons belong to the respondent's party, viz., Kerala Congress (M). On reading Exts. P1 and P2 he became happy because he was certain about the respondent's victory in the election on account of the withdrawal of P. W. 2 's candidature. According to him, if P. W. 2 had not withdrawn from the contest, the chances of success of the respondent in the election were less. P. W. 3's name has been mentioned in the election petition as one of the persons who obtained these pamphlets. However, the election petition does not state that P. W. 3 obtained these pamphlets at Punamon Junction. Election petition also does not reveal the identity of the person, who gave the pamphlets to P. W. 3. These circumstances tend to reduce the value of P. W. 3's testimony. He claims that he belongs to Praja Socialist Party (P.S.P.), a constituent of the U.D.F., which backed the respondent in the election. He claims to be the Member of the State Level Committee of the U. D. F. which is denied by R. W. 1. According to him, he is a member of the Quilon District Liaison Committee of U. D. F. According to R. W. 1, at the last meeting of the Liaison Committee, representatives of R. S. P. informed the committee that P. W 3. has been ousted. He has admitted that in the last election he tried to secure candidature on behalf of S D. F. from Chatayamangalam constituency and since that seat was not allotted to the P. S. P. by the U. D F. He could not contest the election. According to the respondent, on account of this grouse, P. W 3 had worked against the U D.F. candidates at Chatayamangalam and Kottarakkara, a statement denied by the witness. He claims to have worked for the U. D. F. candidate in Chatayamangalam. At the same time he admits that he did not work for the respondent in Kottarakkara at a place where he occupies a high position in the Bar Association at Kottarakkara. His explanation is that he had no time to work. This circumstance would clearly indicate that though he was in the U.D.F., he was not prepared to support respondent's candidature in Kottarakkara. He had been associated with P. W. 2 to some degree in the past. He had admitted that originally it was their Idea that he and P. W. 2 would set up legal practice together and ultimately P. W. 2 did not set up practice at Quilon. He claims to have been happy when the respondent was elected. He would not have been happy if Chandrasekharan Nair had won the election. He even stated that he would not be happy if in this election petition the respondent's election is set aside. It is clear that he is a person who had changed sides. The circumstances that he had a grouse at being deprived of an opportunity to contest in the election, that he did not work for the respondent though he was in the U.D.F., that he knew P.W. 2 closely and the attendant circumstances compel the court not to act on his testimony without sufficient corroboration. Such corroboration is totally lacking in this case. He mentioned the names of three election workers of the respondent and stated that one of them by name Baby gave him these pamphlets. According to him these workers had come in a car and stopped their car. He did not mention the particulars of the car. According to P. W. 3 Podiyan was the President of Kottarakkara Mandalam Committee of the

Kerala Congress (M). R. W. 1 denied this and also denied that he had any worker by name Podiyan, Pappy or Baby.

35. The next item of evidence relates to the alleged distribution of these pamphlets at a place called Panaveli, the name of this place is mentioned in the election petition. The only evidence given in this behalf is by P. W 1 who stated that in the afternoon of 18-5-1982 he found Pappachan and R. C. Unnithan distributing these pamphlets at Panaveli, which is a place five Kilometres away from Kottarakkara town. R. W. 1 admits that Mylum Pappacha is an important leader of his party and had worked for him and that R. C. Unnithan is only a sympathiser of his party. But the election petition does not contain an everment that either of these two persons distributed these pamphlets at Panaveli or at any other place or that P. W. 1 had received these pamphlets from them. R. W. 1 has deposed that P. W. 1 has been on terms of enmity with him and his family for the last nearly 40 years. P. W. 1. admitted that in a criminal case charge against him was for the attempted murder of R. W. 1 and that he was convicted and sentenced in that case to undergo imprisonment for two months and that he same was confirmed in appeal. He also belongs to a rival political party and in the election he worked for the rival candidate, Chandrasekharan Nair. He is certainly an interested witness having personal grudge against the respondent. In the light of these circumstances, his interested testimony could not be acted upon witout sufficient corroboration and no other witness has spoken about the distribution of these pamphlets at Panaveli.

36 P. W. 5 is the only witness who speaks about the distribution of these pamphlets at Kottarakkara junction, a place not mentioned in the election petition. His name also is not mentioned in the election petition. He has deposed that on the evening of 1-5-1 82 he came by bus and got down at Kottarakkara junction and he saw the respondent's workers sitting inside a car and throwing out these pamphlets. The car was fitted with loud speaker arrangement and the flag of respondent's party. He picked up the pamphlets from the ground. He does not know under what circumstances he was cited as a witness. He does not know the persons who were sitting inside the car. His brother was said to be with him and there was no talk between them about the contents of these pamphlets at all. The evidence of this witness does not appear to be natural and probable. He is a christian voter of the constituency. It is difficult to believe that having read the contents of Exts. P1. and P2, he and his brother would not have talked to each other about the purported withdrawal of P. W. 2's candidature. He does not mention the registration number of the car seen by him. In these circumstances, his testimony cannot be accepted.

37. The distribution of these pamphlets at a place called Mylum, a place mentioned in the election petition, is also spoken to by P. W. 5. He stated that his mother told him that the respondent's workers gave the pamphlets along with the voter's slips to her. Evidently the witness has no personal knowledge about the same and therefore his evidence cannot be accepted.

38. P. W. 6 is the only witness who speaks about the distribution of these pamphlets at a place called Kottathala Chandamukku. Kittathala is not one of the places mentioned in the election petition specifically. The election petition also does not mention P. W. 6 as a person who had received the pamphlets. He is a person who belongs to Mylum. He has deposed that on the evening of 18-5-1982 4 or 5 election workers of the respondent gave him these pamphlets. It was Vasudevan, convenor of the Kottathala Booth election committee of the respondent, who gave the pamphlets to him. He does not know the present house name of Vasudevan. He worked in the election for the success of Chandrasekharan Nair. He belongs to the rival political party also and he was sorry that Chandrasekharan Nair as well as P. W. 2 lost in the election. R. W. 1 has denied the distribution of the pamphlets as spoken to by P. W. 6. He also stated that Vasudevan is not the convenor of his election committee at Kottathala Booth. The witness is a partisan witness. The particulars in this behalf are not given in the election petitioner. Therefore, it will only be prudent to seek corroboration before acting on his evidence and such corroboration is not forth coming.

39. P. W. 7 is the only witness who speaks about the distribution of these pamphlets at Kottarakkara in Padinjattinkara. He has deposed that on 18-5-1982 the respondent's workers delivered these pamphlets along with the voters' slips at his house. The slips contained the symbol of the respondent in the election. He does not remember the names of the persons who delivered them at his house. Ultimately he stated that he was not present in the house when these pamphlets were delivered and that they were delivered to his mother. He also stated that he got the information from his mother. His mother has not been examined. Hearsay testimony of this witness case charge cannot be accepted.

40. P. Ws. 8 and 9 speak about the distribution of these pamphlets at Vayakkal Chantha. Vayakkal is not one of the places mentioned in the election petition as place from where these pamphlets had been distributed. Election petition also does not mention the name of P. Ws. 8 and 9. These witnesses are friends and rubber tappers. When they reached Vayakkal Chantha, they found the respondent's workers distributing these pamphlets. They also received pamphlets. These workers had distributed the pamphlets to others also. They did not see any car being used by these workers. They did not belong to any union, much less to C. I. T. U. According to P. W. 8, the workers who had been distributing these pamphlets were Kandamoolayil Radhakrishnan, Edathankara Ramakrishnan, the former a clerk in the Valakam School and the latter an employee in the Electricity Board. According to P. W. 9 Vakkam Narayanan Pillai also was present R. W. I. stated that Radhakrishnan Pillai was not his election worker and that Ramakrishnan Unnithan did not distribute the pamphlets. Of course these alleged workers were not examined by either side. It is argued by the petitioner's counsel that it was the duty of the respondent to

examine these persons and since he did not do so, an adverse inference may be drawn against him. It has to be remembered that the burden of proof is on the petitioner, though in the matter of evidence, it may shift if sufficient evidence had been adduced on behalf of the petitioner. If prima facie, evidence of these witnesses is acceptable, certainly it can be argued that there is no sufficient rebuttal evidence. But, the question is whether the testimony of these two witnesses is prima facie acceptable. It appears to me that it is not so acceptable because of lack of particulars in the election petition. I have referred to the importance attached to the furnishing of particulars in the election petition. The purpose is to put the opposite party on notice of what exactly he has to meet. Mention of these particulars in the election petition was necessary in order to put the respondent on notice of what he had to contend with. In the absence of such reference to these matters in the election petition, it is difficult to hold that the evidence of these two witnesses can be accepted in proof of distribution of these pamphlets by the persons named by them.

41. Distribution of these pamphlets at Ummannoor, a place named in the election petition is spoken to by P. W. 10. He has deposed that on 18-5-1982 respondent's workers came to his house to request him to vote for the respondent and they gave him copies of Ext. P1 and P2 and voters' slips containing a horse symbol, i. e the election symbol of the respondent. There was a good deal of confusion when this witness gave evidence. At first he stated that several persons came to his house including Ashokan and Thulasi, who are local persons. He knows them for a long time and they are workers of Chandrasekharan Nair, the rival candidate of the respondent. Then he was asked in Chief Examination why he mentioned the names of these two persons and he answered that they also received these pamphlets. Thereupon he was asked whether he known the names of persons who gave these notices at his house and he mentioned the name of a Panchayat Member Balakrishnan, Podiyan Kunju and Rajappan. Learned counsel for the petitioner thereupon asked him why he mentioned the names of Thulasi and Ashokan when he was asked to name the persons who gave the pamphlets at his house and he answered that he mentioned these names without understanding the question. The manner in which this witness gave evidence does not inspire any confidence. He is a hotel worker and he in not a member of any Union. He had not worked for any candidate in the election. The hotel where he works is six kilometres away from his house and he leaves his house at 7 a. m. and returns home at 9. 30 p. m. If that be so, it is doubtful if he would have been present in the house when the notices were given at his house. R.W. 1 has deposed that the persons named by P. W. 10 did not distribute any pamphlets for him. Of course these persons had not been examined by either side. I have already indicated that the manner in which this witness gave evidence in court does not inspire any confidence; it is difficult to rest any finding on his evidence.

42. P. W. 15 is an advocate practising at Kottarakkara and the president of Kulakkada Panchayat situated within the limits of Kottarakkara Assembly Constituency. He has deposed that on 18-5-1982 at about 3 p. m.

when he was at Poovvathur junction in Kulakkada Panchayat, C. K. George, worker of the U.D.F. and the President of Kottarakkara Panchayat and the President of the Quilon District Committee of Kerala Congress (M) and the election agent and active worker of the respondent and others came there in a jeep. C. K. George got down from the jeep and they chatted about the chances of various candidates. The witness asked George about the chances of the respondent and was told that the respondent has got good chance of success. In the last election the witness had worked for the rival candidate Chandrasekharan Nair. George, in turn, asked the witness about the chances of Chandrasekharan Nair and the witness replied that his candidate will succeed with good majority. Then George told him that respondent's chances had increased by the withdrawal of P.W. 2 from the contest and so saying he gave to the witness Ext. P1. After reading the pamphlet he went to the Panchayat Election Committee Office where several L.D.F. workers told him about the distribution of these pamphlets. He also saw Ext. P2 at the election committee office, brought by the election workers who told him that the respondent had issued the notices. He was a counting agent of Chandrasekharan Nair and he deposed that C. K. George was present at the place of counting as the election agent of the respondent throughout the counting.

43. It is significant to note that neither Kulakkada nor Poovvathur is mentioned in the election petition as a place where pamphlets had been distributed. Name of this witness also is not mentioned in the election petition. Name of C.K. George is not mentioned in the election petition as the person who distributed the pamphlets. It is not as if C. K. George is only an ordinary worker. He is the President of the Kottarakkara Panchayat and an important leader of the respondent's party. If he himself had been engaged in distributing these pamphlets that would have been known to all and sundry and therefore the non-mention of his name in the election petition assumes all significance. P. W. 15, who is an advocate, did not advice Chandrasekharan Nair to file election petition, though he knew that corrupt practice had been committed. The witness is frank enough to say that he was sorry about the respondent's success in the election. The witness is certainly an interested witness. As already indicated, the particulars regarding the distribution as spoken to by P. W. 15 do not find a place in the election petition. In these circumstances, the court could very well exclude his evidence. At any rate unless his evidence is corroborated, the same cannot be accepted. There is no other witness examined to speak about the distribution of the pamphlets as spoken to by P.W. 15.

44. The last item of evidence in this behalf relates to the distribution of these pamphlets in the premises of the Kottarakkara Bar Association, spoken to by P.W. 4 and P.W. 14, two members of that Bar. They have deposed that on 18-5-1982 at about 10.45 a. m. the respondent accompanied by C. K. George and other election workers came to the Bar Association Hall. Some lawyers were present there. P.W. 14 has deposed that C.K. George gave him pamphlets similar to Exts. P1 and P2. The witness did not talk to the respondent, P.W. 4 on the other hand has given some more details. He has deposed that when this group of people came to the Bar Association

hall, he talks to the respondent and asked him about his chances in the election and the respondent stated that he had no doubt at all about his victory. The respondent also told him that because of P.W.2's withdrawal, respondent's majority will exceed 10 to 15 thousand votes. Then P.W. 4, who had seen an advertisement [Ext. P4 (a)] in the name of P.W.2 in the Mathrubhumi Daily requesting voters to vote for P.W.2, told the respondent that P.W.2 had not withdrawn as per Ext. P4 (a) advertisement. The respondent then told the witness that the advertisement might have been arranged earlier and that P.W. 2 had published a notice regarding his withdrawal from the contest. It was then that C. K. George gave him pamphlets similar to Exts. P1 and P2. It is significant to note that even this witness does not state that the respondent personally distributed any notices. Both the witnesses spoke about the distribution of these pamphlets by C. K. George, an important particular which does not find a place in the election petition. This is all the more surprising in view of the importance of C. K. George, and the consistent stand taken by some of the witnesses that C. K. George was the election agent or the Chief Election agent of the respondent. Election petition mentions the name of P.W. 4. Obviously, at the time of preparing the election petition, P.W. 2 would have known about what transpired in the Kottarakkara Bar Association Hall. Yet, the name of C. K. George or the other persons who accompanied the respondent does not find a place in the election petition. This is a very significant feature militating against the acceptability of the testimony of these two witnesses. It is significant to note that the election petition does not mention about the distribution of these pamphlets by such important personalities at the Bar Association premises.

45. P.W. 4 originally belonged to the respondent's party, i. e. Kerala Congress (M). He filed his nomination paper as a candidate in Kottarakkara Constituency. He claims to have withdrawn from the contest in obedience to the direction of his party. According to R.W. 1, P.W. 4 had filed his nomination violating the decision of the party and thereafter he left the party and supported Chandrasekharan Nair in the election, but this is denied by P.W. 4, who stated that he withdraw from the contest because he wanted the respondent to win. Sister of his wife is married to the younger brother of the rival candidate Chandrasekharan Nair. Witness also stated that he was happy when the respondent won the election, but if he losses in the election petition the witness will not be sorry and that is because of the corrupt practice of the respondent. It is clear that P.W. 4 is a person disappointed in politics and who was rustrated by the respondent in the matter of securing party's candidature to contest the election from Kottarakkara constituency. It is not safe to act on the evidence of such a person, unless the court is fully satisfied about the truth of his evidence. Such satisfaction could be arrived at on the basis of corroboration. Corroboration if forthcoming only from P. W. 14, whose name is not mentioned in the election petition at all. In view of the fact that the name of this witness is not mentioned in the election petition, I do not think it is safe to act on his evidence. I, therefore, hold that the distribution of these pamphlets in the

Bar Association Hall at Kottarakkara by C. E. George in the presence of the respondent has not been satisfactorily established.

46. In the result, I hold that the petitioner has not succeeded in proving that the pamphlets similar to Exts. P1 and P2 were distributed by the respondent or any other persons named by the witnesses or by the election workers of the respondent. Issues Nos. 2 and 3 are answered against the petitioner and in favour of the respondent.

47. *Issue No.* 7: I have already answered Issues Nos. 4 to 6 against the petitioner. It must, therefore, follow that the petitioner has failed to prove any corrupt practice as contemplated in subsection (2) or (3) or (3a) or (5) of section 123 of the Act. Issues Nos. 2 and 3 also have been held against the petitioner. The respondent has not been proved to have distributed pamphlets like Exts. P1 and P2. It is not proved that Sri C.K. George was the election agent of the respondent. It is also not proved that any other agent or election worker of the respondent distributed these pamphlets. I have indicated that it has not been argued before me that the distribution of these pamphlets has materially affected the results of the election. Since the distribution of these pamphlets has not been satisfactorily proved it is unnecessary for me to consider whether the distribution was with the consent of the respondent or his election agent or by any such person acting as agent in connection with the election with the consent of the respondent. Under issue No. 7 I hold that the commission of any corrupt practice as contemplated under clause (b) of sub-section (1) or under sub-clause (ii) of clause (d) of subsection (1) of Section 100 of the Act has not been established. This Issue is answered against the petitioner and in favour of the respondent.

48. *Issue No.* 8: In the light of my findings this issue is unnecessary. Further, under this issue it has to be held that the allegations in the election petition, if proved, would constitute corrupt practice.

49. *Issue No.* 9: From the findings recorded above it is clear that the petitioner is not entitled to a declaration that the election of the respondent is void and therefore I hold that the petitioner is not entitled to such a declaration.

0. *Issue No.* 10: In the circumstances, the substituted petitioner has to pay the costs of these proceedings to the respondent. The substituted petitioner shall pay to the respondent a sum of Rs. 2,000 as the respondent's costs. This issue is answered accordingly.

In the result, the election petition is dismissed and the substituted petitioner shall pay to the respondent a sum of Rs. 2,000 (Rupees two thousand only) as costs towards which the amount deposited by the substituted petitioner in this court shall be adjusted.

The Registrar of the High Court shall immediately intimate the substance of this decision to the Election Commission, the speaker of the Kerala State Legislative Assembly, and as soon as may be thereafter, send

to the Election Commission an authanticated copy of this judgment as required under Section 103 of the Act.

Issue carbon copies to the parties on usual terms.

(Sd.)
U.L. BHAT,
Judge.

7th March, 1983.

(true copy)

(Sd.)
Assis ant Registrar.

APPENDIX

Petitioner's Exhibits:

P1 dated 17-5-1982		Copy of Pamphlet purported to be published by Sri Thomas K. Panicker B.A.LL.B.
P1 (a)	do.	Portion of do. in brackets
P2	18-5-1982	Notice purported to be published by Sri R. Krishna Pillai
P3 (a)	do.	Portion of do. in brackets
P3	"29-4-1983	Pamphlet purported to be published by Mary Bhavanam Yohannan C. S. P. Chairman
P4	"18-5-1982	Copy of Mathrubhoomi Daily
P4 (a)	18-5-1982	Advertisement of Sri Thomas K. Panicker appeared at page 3 of the Mathrubhoomi Daily dated 18-5-1983.
P5	"11-5-1982	Copy of letter sent by Sri Thomas K. Panicker to Sri J.S. Jesudasan Chief Electoral Officer, Kerala.

Petitioner's Witnesses:

1. N. Vijayamma
2. Thomas K. Panicker
3. P.R. Bhaskaran Nair
4. P. Gopinathan Nair
5. Kunju John, K.
6. Balakrishnan
7. Nissar
8. Surendran Pillai
9. Gopinatha Pillai
10. Manoharan
11. S. Balachandran Nair
12. S. Sukupalan

13. M. V. Gopalakrishnan
14. N. Sukumaran Poti
15. Vasu, N.
16. Murleedharan Pillai

Respondent's witness:

R. Balakrishna Pillai

Costs to the Respondent Rs. 2000.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Wednesday, the 5th January 1983/15th Pousha 1905

Present:

The Hon'ble Mr. Justice U L. Bhat

CMP. No. 20314/82 in E. P. No. 9/82

Petitioner:

Vijayan, s/o Nanoo, Ponukozathu Veedu,
Velakom P. O., Kottarakkara.

Vs.

Respondent:

R. Balakrishna Pillai, Kizhoottu House,
Kottarakkara, Quilon District.

Petition praying that in the circumstances stated in the affidavit filed therewith, the High Court be pleased to substitute the petitioner in the place of Sri Thomas K. Panicker in E. P. No. 9/82.

This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of Mr. M. K. Damodaran, Advocate for the petitioner, and of Mr. T. P. Kolu Nambiyar for the Counter Petitioner the court passed the following:

ORDER

E. P. No.9 of 1982 is an Election Petition filed challenging the election of their respondent as a member of the Kerala Legislative Assembly during the last general elections from Kottarakkara Legislative Constituency No. 117. Petitioner therein filed CMP. No. 15558 of 1982 seeking to withdraw the election petition. After the required formalities such as publication in the gazette, etc. were over, that petition was allowed. Meanwhile, a voter in the constituency concerned has filed this petition under section 110 (iii) (c) of the Representation of Peoples Act, 1951 praying that he may be substituted as petitioner in

the place of the original petitioner in the Election Petition and to continue the election petition. The respondent has filed a counter denying petitioner's status as a voter in the constituency concerned. Voter's list has been produced by the petitioner. Petitioner has also produced a certificate from the Electoral Registration Officer and Tahsildar, Kottarakkara showing that the present petitioner is enrolled as a voter (Serial No 65, House No. 31 in polling station No. 107 of the Electoral roll of 117 Kottarakkara Legislative Assembly Constituency). There can, therefore, be no doubt that the present petition is a voter in the constituency concerned. Therefore, there cannot be any objection in his coming on record as petitioner in the election petition and to continue the election petition. This CMP, is, therefore, allowed, but without costs.

2. Petitioner will deposit in court a sum of Rs. 2,000 (Rupees two thousand only) as security with notice of such deposit to the respondent within one week from to day. In case the security aforementioned is furnished within the time specified, the respondent will file his written statement, if any, within one week thereof Election Petition be called for framing of Issues on 20-1-1983.

(Sd.)
U. L. Bhat,
Judge.

5th January 1983.

(True Copy)

(Sd.)
Assistant Registrar

By order,
(Sd.)
M. L. Wahi,
Under Secretary to the Election,
Commission of India.